

MICHIGAN STATE
UNIVERSITY

December 8, 2003

Justices of the Michigan Supreme Court
Supreme Court Clerk
P. O. Box 30052
Lansing, MI 48909

RE: Proposed Court Rule #2003-47

Dear Sir or Madam:

I wish to express my concern and opposition to the proposed rule on establishing an Inactive Asbestos Docketing System in Michigan. To briefly summarize my credentials:

- Board Certified in Occupational and Environmental Medicine
- Board Certified in Internal Medicine
- Fellow American College of Epidemiology
- Fellow American College Occupational and Environmental Medicine
- Professor of Medicine and Chief of the Division of Occupational and

Environmental Medicine at Michigan State University



**DEPARTMENT OF
MEDICINE**

**Occupational &
Environmental
Medicine**

Kenneth D. Rosenman M.D.
Professor of Medicine

Michigan State University
117 West Fee Hall
East Lansing, MI
48824-1315

517 353-1846
Fax 517 432-3606

rosenman@msu.edu

I am one of the 11 "B" readers in the state and have practiced occupational/environmental medicine for over 20 years. Although I have been an expert witness on asbestos for both defendants and plaintiffs, my primary responsibilities are research in occupational lung diseases, including asbestos, teaching and clinical activity. For the last 15 years I have administered the state's occupational disease reporting law under a Michigan State University-State of Michigan contract. I also have had a contract with the Federal Government to interpret over 6,000 radiographs from Libby, Montana for asbestos-related changes.

I strongly object to the criteria of the ABA for non-malignant asbestos-related disease claims. The American Thoracic Society has objected to the ABA standard as well as some of the experts the ABA consulted when they drafted the standard. The standards do not adequately address impairment from asbestos and will unfairly exclude individuals where the medical community generally supports asbestos-related impairment. Given my experience administering the state's occupational disease reporting law where we review hundreds of Michigan asbestos related cases a year, I can unequivocally state that the ABA criteria do not meet the standard of care in Michigan for asbestos-related impairment.

Justices of the Michigan Supreme Court

December 8, 2003

Page 2

I can understand the court's desire to limit potentially "frivolous" litigation and ensure the availability of fair compensation for impaired individuals but the proposed rule goes well beyond this and will unjustly exclude individuals where the science indicates asbestos-related impairment. The "backstop" provision in the ABA's standard that would allow individuals to file suit even if they didn't meet the standard's criteria is so narrowly crafted that it would not assist most of the individuals who would be unjustly excluded by the ABA criteria.

If you have any questions about my comments, I would be happy to discuss them further with you.

Sincerely,

Kenneth D. Rosenman, M.D.
Professor of Medicine

KDR/rjv